

Guardsmen, Reservists have civilian job protection

By Jennifer West

377th ABW Public Affairs Office

Members of the National Guard and Air Force Reserves have job protection for their return to their civilian employment.

Their jobs are protected by a federal act, the Uniformed Services Employment and Reemployment Rights Act, USERRA, which ensures that men and women in military service are not penalized for serving their country.

The 150th Fighter Wing has two members trained to assist guardsman with questions or problems with their employers.

Maj. Melissa Sunnygard-Couse and MSgt. Angela Tapia are the Wing's ESGR ombudsmen.

"We act as mediator between an employee and employer with any problems that may arise from military obligations," Couse said.

The Employer Support for the Guard and Reserve Ombudsmen Services Program addresses conflicts or potential problems between employers and employees serving their country through the Guard or Reserve. The New Mexico Committee is headed by Normal Churchill, who oversees about 110 trained volunteers who administer the program in the state.

The success rate resolving conflicts is rated at 95 percent of all requests nationally. The majority of problems are cited as the result of poor communication between employer and employee or misunderstanding of rights and responsibilities as defined by the law.

With some exceptions, the law allows a five-year limit of cumulative time served in the military during which reemployment rights are in effect. And for pension benefit purposes, the employees' time away serving cannot be considered a break in employment and the time served is included as part of vesting and benefit accrual for the employee. The five-year total for time served excludes inactive duty and annual training, involuntary recall to or retention on active duty, voluntary or involuntary active duty in support of a way, national emergency and certain operational missions, and certain additional training requirements.

Whereas military members previously had to request time away from the job, they now need only to provide their employers with notification of pending military service.

Suggested forms of documentation to employers would be Form DD-214, endorsed orders or a letter from the unit commander. Employers are always welcome to verify an employee's call to duty by contacting the military unit.

Employees should provide as much advance notice as possible, military necessity could preclude early notification. There is no differentiation between voluntary and involuntary service, and employees cannot be required to use their earned vacation or similar leave to serve their country.

Essentially, the USERRA protects service members' right

to return to their civilian employment after completing military service with their seniority, status and pay rate reinstated. And, the act also is aimed at preventing discrimination in hiring, promotion or retention based on present or future membership in the armed services. No other law, policy or practice overrides or diminishes the protections of the act, which applies to businesses of all size. However, the act does not provide protection to independent contractors or those considered self-employed.

Reserve component members who experience employment problems caused by military obligations should first notify their commands. In the event problems are not resolved locally, contact Ombudsmen Services at ESGR National Headquarters, 800-336-4590, or on the Internet at www.esgr.org.

Guardsman, Reservists also have responsibilities to employers

Guardsmen and reservists also have responsibilities to employers regarding their military obligations.

According to www.esgr.org, written or oral notification of upcoming duty must be made to employers prior to going on duty, unless precluded by military necessity. Employees are highly encouraged to notify their employer of any "window" of anticipated military activity, when application for orders is made, or if notified of possible involuntary recall.

"There are circumstances when an employer requests orders and they are not readily available," said Maj. Melissa Sunnygard-Couse, ombudsman for the 150th FW.

"As an ombudsmen," Couse said, "we can supply the employer with a formal letter signed by our commander in lieu of orders if they immediately need something in writing regarding an employee's military duty."

As a rule of thumb, if you are required to serve military duty from one to 30 days, you have safe travel home from your duty location plus 8 hours for sleep before reporting to your civilian job.

If you are required to serve military duty from 31 to 180 days, you can apply for reinstatement within 14 days of your return. Simply said, you have up to 14 days for rest and relaxation before reporting to your civilian job for work.

If you are required to serve military duty for more than 181 days, you can apply for reinstatement within 90 days.

The employee is subject to the personnel policies and practices of the employer for unexcused absences if employees do not return to work in a timely manner.

Your local ombudsmen are:

Maj. Melissa Sunnygard-Couse..... 853-7672

MSgt. Angela Tapia..... 846-1370

Gary Kaiser (State)..... 323-1074